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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,815	10/23/2003	James R. Grabek	2981	6313

7590 08/01/2006  
Beck & Tysver, P.L.L.C.  
Suite 100  
2900 Thomas Avenue S.  
Minneapolis, MN 55416

EXAMINER

JOHNSON III, HENRY M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/691,815

Applicant(s)

GRABEK ET AL.

Examiner

Henry M. Johnson, III

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Response to Arguments***

Applicant's arguments filed 06/02/2006 have been fully considered but moot in view of the new ground(s) of rejection. The Ideker et al. and Bush et al. references are interpreted as having all the claimed features, however, additional art to Harris is cited to reject the articulated joint.

Further, the examiner maintains that the asymmetrical barb is new matter, not in the original disclosure.

### ***Drawings***

This application lacks formal drawings. The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: While the specification describes the apparatus for use in the method, the method steps are not positively disclosed; specifically entering a pericardial space.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

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interpreted as links. Merriam-Webster's Collegiate Dictionary defines articulated as "consisting of segments united by joints". Clearly, the apparatus of Harris has joined segments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the asymmetrical barbed pacing electrode as taught by Bush et al. and the joined segments as taught by Harris in the method of Ideker et al. as such electrodes are well known in the art as stated by the applicant in the background of the specification. It is proper to take into consideration not only the teachings of the prior art, but also the level of ordinary skill in the art. In re Luck, 476 F.2d 650, 177 USPQ 523 (CCPA 1973). Specifically, those of ordinary skill in the art are presumed to have some knowledge of the art apart from what is expressly disclosed in the references. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,683,447 to Bush et al. in view of U.S. Patent 4,627,439 to Harris. Bush et al. disclose a cardiac lead system with an asymmetrical barb at the distal end (Fig. 6) and electrodes around a flexible portion of an elongated body (Fig. 3, # 22). The engaging the epicardium with a temporary lead is intended use, having no impact on the device structure. The flexible body of Bush et al. is capable of being articulated, however, Harris teaches flexible sections of a cardiac pacing lead including electrode sections (Fig. 10, # 25) and insulator sections (Fig 10, # 31). The sections are interpreted as links. Merriam-Webster's Collegiate Dictionary defines articulated as "consisting of segments united by joints". Clearly, the apparatus of Harris has joined segments. Further, a skilled artisan would recognize the flexibility required in a cardiac lead device could be provided by flexible materials or jointed segments. It would have been obvious to one skilled in the art to use the joined sections as taught by Harris in the invention of Bush et al. as an alternative means of providing flexibility in the device.

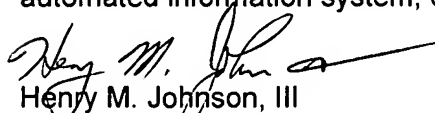
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### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739